

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rule making related to lead-based paint

The Public Health Department hereby amends Chapter 70, “Lead-Based Paint Activities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 135.105A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.105A.

Purpose and Summary

These amendments consist of several changes grouped into the following categories: dust-lead hazard adjustment, deletion of and addition to definitions, deletion of rules that the program no longer deems necessary, and clarification of training requirements.

The United States Environmental Protection Agency (EPA) recently adjusted the dust-lead hazard threshold for floors and window sills. The changes in this area were driven by recent evidence and science in the field, and were made effective in January 2020. Iowa is an authorized state for lead-based paint activities and must be in compliance with EPA regulations.

The other changes are related to definitions, training provider requirements/course, and outdated program rules and language. These changes are needed to reflect current practices and requirements.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4773C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the State Board of Health on January 8, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver and variance provisions contained in 641—Chapter 178.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on March 18, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule ~~641—70.2(135)~~, definitions of “Chewable surface,” “Clearance level” and “Dust-lead hazard,” as follows:

“*Chewable surface*” means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. Surfaces can be considered chewable even if there is no evidence of teeth marks.

“*Clearance level*” means the value at which the amount of lead in dust on a surface following completion of interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, rehabilitation, or renovation is a dust-lead hazard and fails clearance testing. The clearance level for a single-surface dust sample from a floor is greater than or equal to ~~40~~ 10 micrograms per square foot. The clearance level for a single-surface dust sample from an interior windowsill is greater than or equal to ~~250~~ 100 micrograms per square foot. The clearance level for a single-surface dust sample from a window trough is greater than or equal to 400 micrograms per square foot.

“*Dust-lead hazard*” means surface dust in residential dwellings or child-occupied facilities that contains a mass-per-area concentration of lead greater than or equal to ~~40~~ 10 micrograms per square foot on floors, ~~250~~ 100 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present in a residential dwelling or child-occupied facility when the weighted arithmetic mean lead loading for all single-surface or composite samples of floors and interior windowsills is greater than or equal to ~~40~~ 10 micrograms per square foot on floors, ~~250~~ 100 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on ~~widow window~~ troughs based on wipe samples. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled residential dwelling in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled residential unit on the property. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled common area in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled common area in the same common area group on the property.

ITEM 2. Adopt the following **new** definition of “Public housing agency” in rule ~~641—70.2(135)~~:

“*Public housing agency*” or “*PHA*” means a state, county, municipality, or other governmental entity or public body which is authorized to engage in or assist in the development or operation of low-income housing. A PHA must be approved by the U.S. Department of Housing and Urban Development (HUD).

ITEM 3. Rescind the definitions of “Certified elevated blood lead (EBL) inspection agency” and “Elevated blood lead (EBL) inspection agency” in rule ~~641—70.2(135)~~.

ITEM 4. Amend rule ~~641—70.3(135)~~ as follows:

~~641—70.3(135)~~ Lead professional certification. A person or a firm shall not conduct lead abatement, renovation, clearance testing after lead abatement, lead-free inspections, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after renovation, or interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35 unless the person or firm has been certified by the department in the appropriate discipline. However, persons who perform these activities within residential dwellings that they own are not required to be certified, unless the residential dwelling is

occupied by a person other than the owner or a member of the owner's immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspector/risk assessors employed by or under contract with ~~a certified elevated blood lead (EBL) inspection agency~~ the department, a local board of health, or a public housing agency. In addition, persons who perform renovation under the supervision of a certified lead-safe renovator, certified lead abatement contractor, or certified lead abatement worker and who have completed on-the-job training are not required to be certified. However, on-the-job training does not meet the training requirement for work conducted pursuant to 24 CFR Part 35. Lead professionals and firms shall not state that they have been certified by the state of Iowa unless they have met the requirements of 641—70.5(135) and been issued a current certificate by the department. ~~Elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of 641—70.5(135) and been issued a current certificate by the department.~~

ITEM 5. Amend paragraphs **70.4(1)“p”** and **“q”** as follows:

p. The training program shall notify the department ~~in writing~~ within 30 days of changing the address specified on its training program approval application or transferring the records from that address.

q. A training program shall notify the department ~~in writing~~ at least 7 days in advance of offering an approved course. The notification shall include the date(s), time(s), and location(s) where the approved course will be held. A training program shall notify the department at least 24 hours in advance of canceling an approved course.

ITEM 6. Adopt the following **new** subrule 70.4(5):

70.4(5) To be approved for the training of elevated blood lead (EBL) inspector/risk assessors, a course must be at least eight training hours with a minimum of two hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

- a.* Role and responsibility of an elevated blood lead (EBL) inspector/risk assessor.
- b.* Background information on childhood lead poisoning prevention programs in Iowa.
- c.* EBL lead inspection protocol described in this chapter and the EBL inspection protocol recommended by HUD.
- d.* Environmental and medical case management of lead-poisoned children.
- e.* Health effects of lead poisoning including an in-depth review of the scientific studies demonstrating the health effects of lead poisoning.
- f.* Chelation therapy including at what levels it is recommended and when it might not be needed.
- g.* Risk of childhood lead exposure from adult occupations or hobbies.
- h.* Case scenarios.*
- i.* The course shall conclude with a course test. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.
- j.* The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student on the procedures needed to apply to the department for certification and provide information to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.
- k.* All of the course materials must be provided to each student. The materials may be provided electronically unless an individual student requests that the materials be provided on paper.

ITEM 7. Amend paragraph **70.5(1)“d”** as follows:

d. If wishing to become a certified elevated blood lead (EBL) inspector/risk assessor, documentation of successful completion of ~~8 hours of training from the department's childhood lead~~

~~poisoning prevention program. This training shall cover the roles and responsibilities of an elevated blood lead (EBL) inspector/risk assessor and the environmental and medical case management of elevated blood lead (EBL) children~~ an eight-hour elevated blood lead (EBL) inspector/risk assessor course.

ITEM 8. Rescind and reserve subrule **70.5(5)**.

ITEM 9. Amend subrule 70.6(3), introductory paragraph, as follows:

70.6(3) A certified elevated blood lead (EBL) inspector/risk assessor must conduct elevated blood lead (EBL) inspections according to the following standards. Elevated blood lead (EBL) inspections shall be conducted only by a certified elevated blood lead (EBL) inspector/risk assessor. This protocol may be used for children who do not meet the definition of an EBL child as defined in this chapter as long as the inspection is authorized by the department, a local board of health, or a public housing agency.

ITEM 10. Amend subrule 70.6(7) as follows:

70.6(7) A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician must conduct visual risk assessments according to the following standards. Provided that all of the following standards are met, a certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician may remotely conduct a visual risk assessment using technology that allows for adequate visual evaluation of the painted surfaces. Visual risk assessments shall be conducted only by a certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection for risk assessment shall be undertaken to locate the existence of deteriorated paint and other potential lead-based paint hazards and to assess the extent and causes of the paint deterioration. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall assess each component in each room, including each exterior side. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall identify the following conditions as potential lead-based paint hazards:

- (1) All interior and exterior surfaces with deteriorated paint.
- (2) Horizontal hard surfaces, including but not limited to floors and windowsills, that are not smooth or cleanable.
- (3) Dust-generating conditions, including but not limited to conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint.

(4) Bare soil in the play area and dripline of the home.

c. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall prepare a written report for each residential dwelling or child-occupied facility where a visual risk assessment is conducted. No later than three weeks after completing the visual risk assessment, the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall send a copy of the report to the property owner and to the person requesting the visual risk assessment, if different. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall maintain a copy of the report for no less than three years. The report shall include, at least:

- (1) Date of each visual risk assessment;
- (2) Address of building;
- (3) Date of construction;
- (4) Apartment numbers (if applicable);
- (5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified sampling technician, certified lead inspector/risk assessor, or certified elevated blood lead (EBL) inspector/risk assessor conducting the visual risk assessment;

(7) Name and certification number of the certified firm(s) conducting the visual risk assessment;

(8) A statement that all painted or finished components must be assumed to contain lead-based paint;

(9) Specific locations of painted or finished components identified as likely to contain lead-based paint and likely to be lead-based paint hazards;

(10) Specific locations of bare soil in the play area and the dripline of a home;

(11) If a remote visual risk assessment is conducted, a description of the methodologies used;

~~(11)~~ (12) Information for the owner and occupants on how to reduce lead hazards in the residential dwelling or child-occupied facility;

~~(12)~~ (13) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745;

~~(13)~~ (14) Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69 $\frac{1}{2}$, and information regarding Iowa's regulations for renovation found in 641—Chapter 70; and

~~(14)~~ (15) The report shall contain the following statement:

"The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a sampling technician, lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 11. Rescind and reserve subrule **70.6(12)**.

ITEM 12. Amend subrule 70.10(1) as follows:

70.10(1) When the department finds that the applicant, certified lead professional, ~~certified elevated blood lead (EBL) inspection agency,~~ or certified firm has committed any of the following acts, the department may deny an application for certification, may suspend or revoke a certification, may prohibit specific work practices, may require a project conducted by persons or firms that are not certified or a project where prohibited work practices are being used to be halted, may require the cleanup of lead hazards created by the use of prohibited work practices, may impose a civil penalty, may place on probation, may require additional education, may require reexamination of the state certification examination, may issue a warning, may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38, or may impose other sanctions allowed by law as may be appropriate.

a. Failure or refusal to comply with any requirements of this chapter.

b. Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by rules 641—70.3(135) to 641—70.7(135).

c. to *ab*. No change.

ac. Unethical conduct. This includes, but is not limited to, the following:

(1) Verbally or physically abusing a client or coworker.

(2) Improper sexual conduct with or making suggestive, lewd, lascivious, or improper remarks or advances to a client or coworker.

(3) Engaging in a professional conflict of interest.

(4) Mental or physical inability reasonably related to and adversely affecting the ability of the firm or individual to practice in a safe and competent manner.

(5) Being adjudged mentally incompetent by a court of competent jurisdiction.

(6) Habitual intoxication or addiction to drugs.

1. The inability of a lead professional to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

2. The excessive use of drugs which may impair a lead professional's ability to practice with reasonable skill or safety.

3. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

(7) Registration on a state sex offender registry.

ITEM 13. Renumber subrule **70.10(3)** as **70.10(2)**.

ITEM 14. Adopt the following **new** subrule 70.10(3):

70.10(3) Reinstatement.

a. Any individual, training program, or firm that has been revoked, denied, or suspended may apply to the department in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the certification is permanently revoked.

b. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the certification was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/12/20.